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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL	§	Chapter 11
MANAGEMENT, L.P.	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	

**HUNTER MOUNTAIN INVESTMENT TRUST’S WITNESS AND EXHIBIT LIST IN
CONNECTION WITH ITS EMERGENCY MOTION FOR LEAVE TO FILE
VERIFIED ADVERSARY PROCEEDING, AND SUPPLEMENT**

Hunter Mountain Investment Trust (“HMIT”), Movant, files this Witness and Exhibit List for the hearing to consider HMIT’s *Emergency Motion for Leave to File Verified Adversary Proceeding* [Doc. 3699] and *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Doc. 3760] (together the “Motion for Leave”), which is

currently set for June 8, 2023 at 9:30 a.m. (Central Time) (the “Motion for Leave Hearing.”).¹

HMIT reserves the right to amend or supplement this witness list and exhibit list to add or withdraw witnesses or exhibits.

I. Witnesses

1. James P. Seery, Jr. as an Adverse Party;
2. James Dondero;
3. Mark Patrick;
4. Scott Van Meter (Expert Witness). Mr. Van Meter may provide opinion testimony on issues relating to Mr. Seery’s compensation and claims trading. A copy of his CV is produced as part of the Exhibit List. Based upon his education, experience, and training, and his review of documents, Mr. Van Meter has formed several opinions in this matter.

¹ This Witness and Exhibit List is filed subject to and without waiving and of HMIT’s substantive and procedural rights including, but not limited to, HMIT’s objections to the evidentiary format of the Motion for Leave Hearing, including as ordered by the Court’s May 22, 2023, Order Pertaining to the Hearing on Hunter Mountain Investment Trust’s Motion for Leave to File Adversary Proceeding [DE ## 3699 & 3760] (Doc. 3787) (“May 22 Order”). HMIT’s prior objections to an evidentiary hearing on “colorability,” and applying an evidentiary burden of proof to HMIT’s Motion for Leave, were asserted by HMIT during the April 24, 2023, Status Conference, and were further set forth in HMIT’S Reply Brief in Support of its Motion for Leave (Doc. 3785) and during the May 26, 2023, hearing regarding Hunter Mountain Investment Trust’s Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing (Doc 3788), all of which objections are incorporated herein for all purposes (“HMIT’s Evidentiary Hearing Objections”).

Subject to and without waiving HMIT’s Evidentiary Hearing Objections, and based on the Court’s rulings relating to the evidentiary format for the Motion for Leave Hearing, HMIT also files this instrument subject to and without waiving HMIT’s procedural and substantive rights relating to HMIT’s efforts to take discovery in advance of the Motion for Leave Hearing including, but not limited to, the discovery HMIT requested in Hunter Mountain Investment Trust’s Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing (Doc. 3791) to the extent it was denied in the Court’s May 26, 2023, Order Regarding Hunter Mountain Investment Trust’s Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing [Dkt. Nos. 3788 and 3791] (Doc.3800).

Mr. Van Meter has analyzed the claims traded in the bankruptcy case and holds the opinion that, at a minimum, there are several red flags plausibly indicating the use of Material Non-Public Information (“MNPI”) in connection with the Claims Purchasers’ investment in the claims at issue.

Mr. Van Meter also holds the opinion that investments in the claims at issue would have normally required substantial due diligence which was not undertaken, another red flag, plausibly indicating the Claims Purchasers’ use of MNPI in connection with their investment in the claims at issue.

His analysis also identified red flags plausibly indicating that the Claims Purchasers’ acted in concert to acquire certain of the claims at issue.

Mr. Seery’s incentive-based compensation was not based upon any market study, which is another red flag indicating that it was not reasonable and is excessive. Mr. Van Meter also holds the opinion that Mr. Seery’s compensation is clearly excessive if the Claims Purchasers, who later controlled the Claimant Trust, had access to information eliminating or reducing uncertainty and risk associated with the performance targets ultimately set forth in the Incentive Compensation Plan (“ICP”).

Mr. Van Meter will also review Mr. Seery’s deposition testimony and the testimony given by all the witnesses at the hearing on this matter and may offer further opinions in response to that testimony.

Mr. Van Meter’s contact information is B. Riley Advisory Services, 4400 Post Oak Parkway, Suite 1400, Houston, Texas 77027, (713) 858-3225;

5. Steve Pully (Expert Witness). Mr. Pully may provide opinion testimony on issues relating to Mr. Seery’s claims trading.

Mr. Pully has over 37 years of experience as a hedge fund executive, investment banker, attorney, corporate board member and as an expert consultant. He holds a JD Degree as well as a degree in accounting. He is a Chartered Financial Analyst, a licensed CPA and an attorney licensed in the State of Texas. He also holds various FINRA security licenses. His CV is produced as an exhibit identified on the Exhibit List.

Mr. Pully holds various opinions based upon the materials he has reviewed, as well as his education, experience and training, including: (i) the publicly available

projections concerning payout on the claims at issue would not have rewarded the Claims Purchasers with the types of economic returns they would normally hope to realize for a similar type investment; (ii) based on the pessimistic public projections, there is a strong likelihood that inappropriate information was provided to the Claims Purchasers in making their investment decisions; (iii) credit oriented funds, like Farallon and Stonehill, have strong investment requirements and typically perform extensive due diligence and analysis before committing to investments; (iv) it is implausible that an investment decision could have been made by Farallon and Stonehill to acquire the claims at issue for as much as they invested based upon the publicly available information and apparent lack of due diligence; (v) the publicly projected estimates concerning likely returns on the claims at issue did not justify the magnitude of the Claims Purchasers' investment.

Mr. Pully will also review Mr. Seery's deposition testimony and the testimony given by all the witnesses at the hearing on this matter and may offer further opinions in response to that testimony.

Mr. Pully's contact information is 4564 Meadowood, Dallas, Texas 75220, (214) 587-6133.

6. Any adverse party who is present in the Courtroom including, without limitation, Michael Linn and Raj Patel;
7. Any witnesses listed or called by any other party; and
8. Any witnesses necessary for impeachment and/or rebuttal.

II. Exhibits

#	DESCRIPTION	OFFR	OBJ	ADM
1.	Exhibit 1 – Adversary Complaint			
2.	Exhibit 1a – Revised Adversary Complaint attached to Supplemental Motion			

#	DESCRIPTION	OFFR	OBJ	ADM
3.	[Doc. 3784-12] December 17, 2020, Email from James Dondero to James Seery re: MGM			
4.	James Dondero Handwritten Notes – May 2021			
5.	Compliance Logs [Confidential] ²			
6.	[Doc. 3784-36] - News Article – May 26, 2021 – Announcing MGM Deal			
7.	[Doc. 1943] Order (I) Confirming Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief			
8.	[Doc. 1875] Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization (Amended Liquidation Analysis/Financial Projections Dated February 1, 2021 [Doc. 1875-1])			
9.	[Doc. 2030] January 2021 Monthly Operating Report, filed March 15, 2021			
10.	[Doc. 2949] Q3 2021 Post-Confirmation Report			

² This Exhibit has been designated “Confidential” pursuant to the *Agreed Protective Order* [Doc. 382] and is being served on all Parties to these immediate proceedings. This Confidential exhibit is not being filed immediately with this Exhibit List, however, it will be provided via hard copy.

#	DESCRIPTION	OFFR	OBJ	ADM
11.	[Doc. 2229] Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief, filed 4/20/21			
12.	[Doc. 3409] Q2 2022 Post-Confirmation Report (Reorganized Debtor)			
13.	[Doc. 3583] Q3 2022 Post-Confirmation Report (Claimant Trust)			
14.	[Doc. 3757] Q1 2023 Post-Confirmation Report (Claimant Trust)			
15.	[Doc. 0064] Notice of Appointment of Committee of Unsecured Creditors			
16.	CV of James P. Seery, Jr.			
17.	June 2, 2023 Transcript of James P. Seery, Jr.'s Deposition			
18.	January 29, 2021 Transcript of James P. Seery, Jr.'s Deposition			
19.	Excerpts of January 29, 2021 Transcript of James P. Seery, Jr.'s Deposition			
20.	Excerpts of February 3, 2021 Hearing Transcript of James P. Seery, Jr.'s Testimony			

#	DESCRIPTION	OFFR	OBJ	ADM
21.	Excerpts of January 20, 2021 Transcript of James P. Seery, Jr.'s Deposition			
22.	Excerpts of October 17, 2020 Transcript of James P. Seery, Jr.'s Deposition			
23.	[Doc. 3784-44] Assignment Agreement			
24.	John Morris Email re: Text Messages, dated February 16, 2023			
25.	John Morris Email re: Text Messages, dated March 10, 2023			
26.	Doc. 3521-5 – Claimant Trust Agreement			
26a.	[Doc. 1811-3] Redlined Draft of Claimant Trust Agreement, attached to Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications) [Doc. 1811]			
27.	[Doc. 2801] Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust			
28.	[Doc. 3784-43] Memorandum of Agreement – Compensation			
29.	[Doc. 3784-41] Redacted Minutes – Oversight Board, dated August 26, 2021			

#	DESCRIPTION	OFFR	OBJ	ADM
30.	[Doc. 3784-42] Redacted Minutes – Oversight Board			
31.	[Doc. 2211] Notice of Transfer of Claim other than for Security (Acis/ACMLP), dated August 30, 2021			
32.	[Doc. 2212] Notice of Transfer of Claim Other than Security (Acis/ACMLP)			
33.	[Doc. 2215] Notice of Transfer of Claim other than Security (Acis/Muck)			
34.	[Doc. 2261] Notice of Transfer of Claim other than Security (Redeemer/Jessup)			
35.	[Doc. 2262] Notice of Transfer of Claim other than Security (Crusader/Jessup)			
36.	[Doc. 2263] Notice of Transfer of Claim other than Security (HarbourVest/Muck)			
37.	[Doc. 2697] Notice of Transfer of Claim other than Security (UBS/Jessup)			
38.	[Doc. 2698] Notice of Transfer of Claim other Than Security (UBS/Muck)			
39.	Expert CV for Scott Van Meter			
40.	Materials Reviewed by Scott Van Meter			

#	DESCRIPTION	OFFR	OBJ	ADM
41.	Data Chart Prepared by S. Van Meter – Notice of Transfers			
42.	Data Chart Prepared by S. Van Meter – Analysis of Claim Amount Transferred by Month			
43.	Data Chart Prepared by S. Van Meter – Analysis of Expected Returns			
44.	Data Chart Prepared by S. Van Meter – Analysis of Cumulative Distributions			
45.	Data Chart Prepared by S. Van Meter – Analysis of Estimated Trustee Compensation			
46.	Expert CV for Steve Pully			
47.	Materials Reviewed by Steve Pully			
48.	Chart Prepared by S. Pully – Estimated Recovery of Class 8 and Class 9 Claims Based on Public Information			
49.	Chart Prepared by S. Pully – Amount Paid by Farallon and Stonehill for Class 8 and Class 9 Claims			
50.	Chart Prepared by S. Pully – Recoveries on Class 8 and 9 Claims			
51.	Chart Prepared by S. Pully – Calculation of Returns to Farallon and Stonehill			

#	DESCRIPTION	OFFR	OBJ	ADM
52.	Chart Prepared by S. Pully – IRR Calculations			
53.	[Doc. 1894] Transcript of Proceedings (Confirmation Hearing) – February 2-3, 2021 – Volume 1 of 2			
54.	[Doc. 1905] Transcript of Proceedings (Confirmation Hearing) – February 2-3, 2021 – Volume 2 of 2			
55.	[Doc. 1866-5] Amended Liquidation Analysis/Financial Projections, dated January 28, 2021			
56.	HCM Form ADV, Part 1, March 31, 2023			
57.	HCM Form ADV Part 1, April 25, 2023			
58.	[Doc. 3778] Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust			
59.	Doug Draper Letter to US Trustee's Office with Exhibits, dated October 5, 2021			
60.	Davor Rukavina Letter to US Trustee's Office with Exhibits, dated November 3, 2021			
61.	Davor Rukavina Letter to US Trustee's Office with Exhibits, dated May 11, 2022			

#	DESCRIPTION	OFFR	OBJ	ADM
62.	Declaration of Sawnie McEntire with All Exhibits, dated March 27, 2023			
63.	Asset Chart – HCMLP Assets to be Monetized; HCMLP Monetization & Management Fees (est.); Cash Roll;			
64.	Certificate of Formation of Muck Holdings, LLC. filed March 9, 2021			
65.	Certificate of Formation of Jessup Holdings LLC, filed April 8, 2021			
66.	Declaration of Mark Patrick with All Exhibits, dated February 14, 2023			
67.	Letter from Alvarez & Marsal to Highland Crusader Funds Stakeholders, dated July 6, 2021			
68.	[Doc. 1788] Order Approving Debtor’s Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith			
69.	[Doc. 2389] Order Approving Debtor’s Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith			
70.	Sub-Advisory Agreement between NexPoint Advisors, L.P., and Highland Capital Management, L.P. (dated effective as of January 1, 2018)			

#	DESCRIPTION	OFFR	OBJ	ADM
71.	Amended and Restated Shared Services Agreement between			
72.	Articles Concerning MGM			
73.	[Doc. 3662] – Motion for Leave to File Proceeding, Together with All Exhibits Thereto, filed February 6, 2023			
74.	[Doc. 2537] Motion of Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief			
75.	[Doc. 2687] Order Approving Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Property and (II) Granting Related Relief			
76.	Statement of Interested Party in Response to Motion of Nexpoint Strategic Opportunities Fund to Confirm Discharge or Plan Injunction Does Not Bar Lawsuit, or alternatively, for Relief from all Applicable Injunctions (Doc. 1235, <i>In re: ACIS Capital Management</i> , Cause No. 18-30264-sgj11).			
77.	Doc. 3756 – Post-confirmation Report (Reorganized Debtor)			
78.	Excerpts of October 20, 2021 Transcript of James P. Seery, Jr. Deposition			
79.	Case Study – Large Loan Origination			

#	DESCRIPTION	OFFR	OBJ	ADM
80.	Excerpt from Pleading filed in the United States Bankruptcy Court of the Southern District of New York, Case No. 10-14997, <i>In re: Blockbuster Inc.</i> , et al.			
81.	Any document entered or filed into the Bankruptcy Case, including any exhibits thereto			
82.	All exhibits necessary for impeachment and/or rebuttal			
83.	All exhibits identified or offered by any other party at the hearing			

HMIT reserves the right to amend and/or supplement this Exhibit List, including the removal of any exhibit. HMIT also reserves the right to use any exhibit offered by any other party to these proceedings and any document for purely impeachment purposes. HMIT also reserves and does not waive the right to object to any exhibit (or any portion thereof) that may be identified on this Exhibit List to the extent offered by another Party.

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY
PLLC**

By: /s/ Sawnie A. McEntire

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*Attorneys for Hunter Mountain
Investment Trust*

CERTIFICATE OF SERVICE

I certify that on the 5th day of June 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire

Sawnie A. McEntire